

# McNamara Declaration

## Exhibit 128

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**From:** David Hansen, J.D.  
**Sent:** Monday, July 2, 2018 5:53 PM EDT  
**To:** Lila Bailey; Courtney, Kyle K.; [REDACTED]@librarylaw.com; Michelle Wu  
**CC:** Schultz, Jason  
**Subject:** Re: Email to CDL endorsers

Thanks all. I think this all sounds reasonable, and a reasonable timeline for review. Lilia, the context about timing is helpful.

Aug 31 as final for all pieces in place sounds doable, and the timeline before that sounds good too.

As far as a joint blog post, the IA blog probably has the furthest reach but it may not be the best place for a joint post. I have blog at Duke that I'm am in the process of lining up some posts on, and this would be great to post there. None of my own doing (thanks, Kevin Smith), but it has lots of readers. Another option might be "[In the Open](#)" or to Library Journal, as an online opinion piece (I bet they would be open to it). I think either of those later two would be the best.

Dave

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**From:** Lila Bailey [REDACTED]@archive.org>  
**Date:** Monday, July 2, 2018 at 5:08 PM  
**To:** "Courtney, Kyle K." <[REDACTED]@harvard.edu>, Mary Minow <[REDACTED]@librarylaw.com>, Michelle Wu [REDACTED]@law.georgetown.edu>  
**Cc:** Jason Schultz [REDACTED]@exchange.law.nyu.edu>, "David Hansen, J.D." [REDACTED]@duke.edu>  
**Subject:** Re: Email to CDL endorsers

Thanks Kyle,

This is a helpful general outline, and I think it gives Kyle and Dave time to get feedback, and time to do the work Jason suggested, while giving IA what we need to move forward. I would like to consider this our "final deadline schedule" so please if anyone has ANYTHING else they'd like to bring up and make sure is covered before launch, please do so soon. This timeline leaves us with very little wiggle room on back end if things come up, so let's try to think things through now!

Just a few further thoughts and questions:

1. Michelle and I will be working in parallel to get the website completed, and will get it ready to go by the end of August. **I would like to set August 31st as the date to have all the individual pieces in place** (meaning the website is complete with the final versions of the Statement and White Paper uploaded). The week after Memorial day can be for any final communications/launch strategy stuff and to deal with any problems that may arise.
2. We still need to exactly figure out what "launching" the website means... are we just going to remove the password? Are we going to make an announcement? If so, who's doing that and where will it go live? I don't think it's a good idea for it to be only announced through an IA blog post, for example. We do have a few opportunities to announce a date (e.g., the AALL CDL

session, our ALA Copytalk webinar) but I also think we might want to write up a blog post written by all of us - I'm just not sure where that should live. LMK if ya'll have ideas.

3. At what point in this timeline would we be previewing the White Paper with endorsers? Looks like mid to late August?

4. We should think about any other people or groups, aside from endorsers and LCA, that we may want to "pre-brief" on this. One group that comes to mind is AAUP - we've had some very productive conversations with them about CDL. There also Houghton-Mifflin-Harcourt (BPL may be in the best position to handle that one). I have a running list in the Google doc... please add any you think of/provide comments on ones we needn't bother with.

5. At some point, I'd like (some of) us to think through our potential response options to the inevitable criticism from Authors Guild and maybe others, so we're prepared for what they throw at us.

Also just FWIW, I will be on vacation August 9-19th, and Brewster will be on his annual "off the grid" trip for the last 3 weeks of August through Memorial Day. So on my end, I'm aiming to have much in place as possible before August 9th.

Please let me know if you all have any other feedback on this timeline. Once we have it pinned down, I will add the edits to the Google Doc. It is always a good idea for us to communicate by phone as well so I can set up a working group call for us any time it might be helpful.

-Lila

On 7/2/18 12:59 PM, Courtney, Kyle K. wrote:

Greetings from Ireland all -

I will be heading to an off-the-grid island in Galway tomorrow, but wanted to lay out a fixed timeline before I disappear that I think will work for all parties. (And I do not fear the momentum issue - all the meetings I went to at ALA were still buzzing from the Statement and people are anticipating the "more to come" with great interest - including various ALA/ACRL groups, consortia, and large library systems!)

1. Dave and I get this "nearly done" (not perfect) version by July 9th.
2. We share it in a Google doc with all of you and ask for comments, additions, and edits, finished by Monday July 16th (or sooner)
3. As a professional courtesy, we share a print copy with Krista and Jonathan of ALA/ARL and set up a meeting time (TBA week and date)
4. Phase II edits and comments from our other expert peers (Late July to early August)
5. Mid August: Dave and I incorporate the Phase II comments and finish
6. Internet Archive and others launch sometime after Labor Day (b/c of their project schedule & vacation)
7. Sept. 14th (Lila's hard date) and all is done

This schedule allows some flexibility, sufficient time to finish, and still "get it right."

Thanks,  
Kyle

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**From:** Mary Minow [REDACTED]@librarylaw.com>  
**Sent:** Monday, July 2, 2018 2:31:23 PM  
**To:** Michelle Wu  
**Cc:** Lila Bailey; Schultz, Jason; David Hansen, J.D.; Courtney, Kyle K.  
**Subject:** Re: Email to CDL endorsers

These are also excellent points. I will go w whatever majority (minus me) votes

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Take my advice. I'm not using it.

On Jul 2, 2018, at 1:27 PM, Michelle Wu <[REDACTED]@law.georgetown.edu> wrote:

I'm with Lila on not wanting to delay longer and as I've always been comfortable with the idea of releasing the statement without the white paper, I'm fine with that as an alternative.

My concerns on further delay: (1) we've lost most of the momentum from last year, (2) delay has gotten to the point where some signatories are wondering if something's wrong with the statement and that's why we won't release it, and (3) our OGC would actually be happier if there was more robust public debate on this. He's comfortable with our position now but thinks that open debate ultimately would help move the matter forward.

On Mon, Jul 2, 2018 at 2:03 PM Lila Bailey <[REDACTED]@archive.org> wrote:

All,

This project has been delayed for 7 months. I am really troubled by the continued kicking of the can down the road. The Internet Archive has more than an academic interest in this moving forward, and we've been relying on promises that this would be done already. We've already had to embarrass ourselves several times in walking back promised dates.

For us, the absolute drop-dead date we need at least the Statement to be fully publicly released is Sept 14th, in advance of our October event. That will be a year since we first announced this project, and it will be deemed a complete failure and waste of our time if it's not released by then. I'm just being real about the impact of delay on my client (and potentially on my job if this isn't done... seriously guys.)

So here are my questions at this point:

1. What is the earliest deadline that Kyle and Dave can promise to have fully complete, ready to go publishable White Paper? Can we get this whole project out the door before Sept 14?

2. If the group as a whole is uncomfortable setting a specific date for the white paper, is there a way that we can uncouple the release of the Statement from the release of the White Paper?

For IA, the Statement is the thing we actually need... the white paper isn't going to make any difference to us. We're only waiting for the white paper out of some abstract fear of LCA's response and we don't know if the white paper will even satisfy their concerns. And AFAIK, there is no real plan in place to talk to them and make sure it will. I am now regretting that we ever held up the Statement for the white paper in the first place.

I know this may sound like kind of a freak out, but I feel I need to state in the clearest possible terms the real stakes of continued delay on me and my client. I know I'm not anyone's boss, and so all I can really do is beg.

Please let me know.

-Lila

On 7/2/18 7:53 AM, Mary Minow wrote:

that makes sense to me

Mary

On Jul 1, 2018, at 10:54 PM, Schultz, Jason <[REDACTED]@exchange.law.nyu.edu> wrote:

Yeah - sorry to raise this late in the game but I think it might make more sense to have our internal review done before we announce the white paper is forthcoming. First it prioritizes giving enough time to make sure the white paper is the best it can be. Second I was imagining receiving the email as an endorser and being frustrated and/or filled with questions because there is no access to the white paper yet. I expect anyone receiving the email will want to click and read right away.

So I'd propose waiting until after internal review to send and then providing all endorsers with early access (perhaps in waves?) so they aren't surprised by the content when it goes live.

On Jul 2, 2018, at 5:46 AM, David Hansen, J.D. <[REDACTED]@duke.edu> wrote:

Sent something similar to Lila on another thread –

On the paper, I don't think this is quite in shape where comments even from you all would be useful yet. I know we said July 1 and I've been working on it all week, but it's just not there. I think if you can give till the other side of the holiday, it will be worth it. (Let's say Friday this week).



On the email announcement, I remain a bit nervous about the announcing a time / the timeline. On top of me and Kyle having some trouble getting time in on this to wrap it up, after thinking more about the timeline we have sketched out I'm pretty skeptical we're going to have enough time to get feedback in time, with the likelihood of people who we would want feedback from out/on vacation.

Sorry to be a drag on the timing on this...

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**From:** Lila Bailey <[REDACTED]@archive.org>  
**Date:** Sunday, July 1, 2018 at 9:57 PM  
**To:** Michelle Wu <[REDACTED]@law.georgetown.edu>, "David Hansen, J.D." [REDACTED]@duke.edu>, "Courtney, Kyle K." [REDACTED]@harvard.edu>, Mary Minow [REDACTED]@librarylaw.com>, Jason Schultz <[REDACTED]@exchange.law.nyu.edu>  
**Subject:** Re: Email to CDL endorsers

Speak now or forever hold your piece on the email to our endorsers: <https://docs.google.com/document/d/1Iv9L4iyPkaSRGYXb7Ru4bU7bDakjgFRHr16dvntjI1k/edit?usp=sharing>

Planning on sending it out tomorrow morning assuming I get no objections.

On 6/27/18 11:58 AM, Lila Bailey wrote:

Hi all,

Here's a draft email:

<https://docs.google.com/document/d/1Iv9L4iyPkaSRGYXb7Ru4bU7bDakjgFRHr16dvntjI1k/edit?usp=sharing>

There's a question in there about the Statement title... if we're going to change it, this would be a good opportunity to announce/explain. I'm thinking this should go out on Monday of next week, so please get any thoughts/edits in by Friday.

For context, the previous email is on the second page of the Google Doc.

Thanks!

Lila

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Michelle M. Wu | Associate Dean for Library Services & Professor of Law  
111 G Street, N.W. | Washington, D.C. 20001  
Office: [REDACTED] | Email: [REDACTED][@law.georgetown.edu](mailto:[REDACTED]@law.georgetown.edu)